



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D C 20463

Kurt F. Zimmermann, Esq.  
Silverstein & Osach, PC  
234 Church Street, Suite 903  
New Haven, CT 06510

RE: MUR 5453  
Thomas M. Ariola, Jr.

Dear Mr. Zimmerman:

By letter dated July 22, 2004, your client, Thomas M. Ariola, Jr. was notified that the Federal Election Commission ("the Commission") found reason to believe that he violated 2 U.S.C. §§ 441b(a), 441a(f), and 434(b)(3)(A) in his personal capacity. On September 10, 2004, Mr. Ariola submitted a response to the Commission's reason to believe findings. After considering the circumstances in this matter, the Commission determined on June 1, 2005, to take no further action against Mr. Ariola in connection with 2 U.S.C. § 434(b)(3)(A) and to enter into negotiations directed towards reaching a conciliation agreement in settlement of the 2 U.S.C. §§ 441b(a) and 441a(f) findings prior to a finding of probable cause to believe.

On June 1, 2005, the Commission further found that there is reason to believe your client, in his personal capacity, violated 2 U.S.C. §§ 434(a)(1) and (b)(2), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based upon information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Letter to Mr. Zimmermann, Esq.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas  
Chairman

Enclosures

Factual and Legal Analysis  
Procedures  
Conciliation Agreement

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Thomas M. Ariola, Jr.

MUR 5453

**I. GENERATION OF THE MATTER**

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).<sup>1</sup>

**II. ANALYSIS**

Information obtained during the Commission's investigation revealed that during the time period Mr. Ariola was performing his duties as Deputy Treasurer, and in absence of a treasurer, the Giordano for U.S. Senate Committee's ("the Committee") total amount of receipts were underreported by \$18,248.78 in disclosure reports prepared by Mr. Ariola.

**A. *During the Time Period Mr. Ariola Was Preparing Reports, He Was Functioning As Treasurer of the Committee.***

Mr. Ariola, a Certified Public Accountant ("CPA"), was named Deputy Treasurer of the Committee in early 2000 and remained Deputy Treasurer until he resigned on July 31, 2001. RTB Response, p. 1; Subpoena Response, ¶ 1. During that time, he was responsible for signing checks for disbursements. Subpoena Response, ¶ 1. After the Committee's treasurer resigned, Mr. Ariola also began preparing and filing reports with the Commission on behalf of the

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<sup>1</sup> All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended, ("the Act"), herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

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Committee.<sup>2</sup> To complete that task, Mr. Ariola reviewed copies of receipts and checks that had been donated to the Committee, and compared copies of deposited checks with the Committee's bank account statements. Subpoena Response, ¶¶ 7, 8, and 21. Mr. Ariola acknowledges that he signed the 2000 October Quarterly and 2000 Pre-General Reports. Subpoena Response, ¶ 6. He admits that, although he did not sign the 2000 Post-General Report, he "did write [his] name in the box designated for the name of the treasurer as "Thomas Ariola—In absence of the treasurer." Subpoena Response, ¶ 13. His name also appears on the 2000 Year-End Report as "Thomas Ariola, In Absence of the Treasurer." Subpoena Response, ¶ 6. He further admits that no one helped him prepare the disclosure reports. Subpoena Response, ¶ 7. He avers that he learned what information was required to appear on disclosure reports filed with the Commission by reading the instructions provided by the FEC and contained in the instructional section of the reports. Subpoena Response, ¶ 23.

Mr. Ariola asserts that he did not believe it was his responsibility to oversee the receipt of donation checks. RTB Response, p. 1. He further asserts that he was never officially appointed treasurer of the Committee. RTB Response, pp. 2-3. However, Mr. Ariola admits that he held the title of "Deputy Treasurer" and that he assumed the treasurer's duties. Subpoena Response, ¶ 1. Furthermore, in communications with the Commission, the Committee referred to Mr. Ariola as its treasurer. RTB Response, p. 4 and Exhibit A.

A person acting as treasurer, but not officially designated as treasurer, may be held liable for reporting violations. *See e.g., FEC v. Committee to Elect Bennie O. Batts*, No. 87-5789 (S.D.N.Y. February 24, 1989) and accompanying pleadings filed by the FEC (setting forth in detail the respective roles of the named treasurer and others performing financial duties). Based

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<sup>2</sup> Michael Blumenthal was the treasurer of the Committee until mid-2000, when he resigned. Subpoena Response, (Footnote continues next page.)

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1 on the duties performed by Mr. Ariola, including but not limited to the signing of checks for  
2 disbursements, preparing reports to be filed with the Commission, comparing copies of deposited  
3 checks with the Committee's bank account statements, and his official appointment as Deputy  
4 Treasurer, Mr. Ariola should be treated as the treasurer of the Committee during the relevant  
5 period.

6 ***B. Mr. Ariola Failed to Disclose The Committee's Total Amount of Receipts for***  
7 ***the Applicable Reporting Periods.***  
8

9 From July 2, 2000 through May 8, 2001 (the last deposit made in the Committee's bank  
10 account), a total of \$18,248.78 in receipts to the Committee are not accounted for on FEC  
11 disclosure reports.<sup>3</sup> Treasurers of political committees are required to file reports of receipts and  
12 disbursements. 2 U.S.C. § 434(a)(1); *see also* 11 C.F.R. § 104.1(a). Each report required to be  
13 filed under 2 U.S.C. § 434(a)(1) shall disclose the total amount of all receipts received by the  
14 Committee. *See* 2 U.S.C. § 434(b)(2); *see also* 11 C.F.R. § 104.3(a). Mr. Ariola admitted that as  
15 Deputy Treasurer he assumed the treasurer's duties. *See discussion supra.*

16 It appears that Mr. Ariola had the requisite information at his disposal to fully report all of  
17 the Committee's receipts, and as Deputy Treasurer, it was part of his duties. Yet, \$18,248.78 in  
18 receipts were not reported on the disclosure reports prepared by Mr. Ariola. Commencing in  
19 October 2000, he did all the hands on work of the Committee's banking, such as reviewing the  
20 Committee's receipts, reconciling the Committee's bank statements, and preparing the  
21 Committee's disclosure reports. Each quarter, two other campaign workers would present Mr.  
22 Ariola with a box of receipts and copies of checks that were donated to the Committee.  
23 Subpoena Response, ¶ 9. Mr. Ariola would then call PNB, where the Committee had its

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¶ 4. No treasurer was appointed to the Committee after Mr. Blumenthal resigned. *Id.* Mr. Ariola was Deputy Treasurer for the Committee at all times. *Id.*

1 checking account, for a copy of a bank statement. *Id.* Mr. Ariola would then attempt to match  
2 the check copies with deposits listed on the bank statements. *Id.* Despite his access to the  
3 Committee's receipts and bank records, he underreported the Committee's receipts by  
4 \$18,248.78 on disclosure reports prepared by him. In addition to his detailed knowledge of the  
5 Committee's finances, his status as a CPA indicates that he had the specialized knowledge and  
6 training to accurately match up all the Committee's receipts with its bank statements and to  
7 accurately report all the Committee's receipts on disclosure reports to the Commission. *See*  
8 Subpoena Response ¶ 23. Given these facts, Mr. Ariola recklessly failed to fulfill his duties  
9 under the Act and regulations.

10 Therefore, there is reason to believe former Deputy Treasurer Thomas M. Ariola, Jr.  
11 violated 2 U.S.C. §§ 434(a)(1) and (b)(2) in his personal capacity.

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<sup>3</sup> Mr. Ariola avers that he signed the 2000 October Quarterly Report. Subpoena Response, ¶ 6. That Report covers the period beginning July 1, 2000.

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